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in action, held in trust for a citizen resident of the state by a non-resident trustee, was properly listed and assessed in the name of the life tenant, instead of in the name of the trustee under Code 1904, § 492, as amended by Acts 1918, c. 99, especially where the income of the life tenant is in excess of the tax imposed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 115.]

Error to Hustings Court of Richmond.

Action between Addie C. Ellett and the Commonwealth of Virginia. Judgment for the latter, and Ellett brings error. Affirmed.

*R. L. Montague*, of Richmond, for plaintiff in error.

*J. Vaughan Gary* and *E. Warren Wall*, both of Richmond, for the Commonwealth.

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BREEDLOVE *v.* HARDY.

Jan. 19, 1922.

[110 S. E. 358.]

1. **Animals (§ 44\*)—Wrongful Killing of Dog Actionable.**—By the common law, and also under Code 1919, § 2324, declaring dogs assessed with a license tax which is not delinquent to be personal property and the subject of larceny or trespass, an action is maintainable for the wrongful, unlawful, and intentional killing of a dog.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 375.]

2. **Animals (§ 44\*)—Burden on Defense to Show Justification for Killing Dog.**—In an action for the wrongful killing of a dog, where the proof of the killing is clear, the burden is on defendant, who justifies his action, to show the necessity therefor.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 344.]

3. **Animals (§ 84\*)—Dog May Be Killed in Defense of Domestic Animals.**—The owner of domestic animals or fowls has the right to defend them from injury through the attacks of dogs, but the extent of such right of defense necessarily depends on whether the right is reasonably exercised, so as to make it lawful and justifiable.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 374.]

4. **Animals (§ 85\*)—Justification for Killing of Dogs Held for Jury.**—Evidence that dogs had been disturbing plaintiff's turkeys every day or two during the whole summer, and that on a particular morning they drove the turkeys over on a neighbor's premises, and plaintiff followed with a gun and found them after the turkeys, though they had stopped chasing the turkeys when he got close enough to shoot, made a question for the jury whether a man of ordinary prudence would have been reasonably led to believe that it was necessary to kill the dogs to protect the turkeys.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 385.]

**5. Animals (§ 84\*)—Wanton Killing of Dogs Wrongful.**—While an owner of turkeys had a right to kill dogs, if necessary, in defense of his property, he had no right to kill them wantonly, or if his property could be reasonably protected without such killing.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 375.]

**6. Animals (§ 84\*)—Statute Held Not to Outlaw Dogs So as to Permit Unjustifiable Killing.**—Acts 1918, c. 390, § 4, making it the duty of the game warden to kill any dog found injuring or killing domestic animals or fowls, does not affect the qualified property which the owner of the dog has, or extend the right of an owner of fowls to kill dogs in the defense of his property; and it was error to charge that if dogs were injuring or killing domestic fowls belonging to defendant they were outlawed and the owner could have no right therein, and the verdict must be for defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 374.]

**7. Appeal and Error (§ 1064 (1)\*)—Instruction for Defendant if Dogs Injuring or Killing Turkeys When Killed Held Harmful.**—In an action for killing dogs which defendant claimed were chasing his turkeys, an instruction that if the dogs were injuring or killing domestic fowls they were outlawed and plaintiff could have no property right therein, and the verdict must be for defendant, held harmful, as the jury may have ignored applicable doctrines of law contained in other instructions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Lunenburg County.

Action by A. W. Breedlove against Morris Hardy. Judgment for defendant, and plaintiff brings error. Reversed and remanded.

*Geo. E. Allen*, of Victoria, for plaintiff in error.

*Blaine F. Harman* and *W. L. Welborn*, both of Roanoke, for defendant in error.

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APPALACHIAN POWER CO. *v.* COMMONWEALTH *ex rel.*  
NATIONAL CARBIDE CORPORATION.

Jan. 19, 1922.

[110 S. E. 360.]

**1. Public Service Commissions (§ 31\*)—On Appeal from Order Fixing Rates Commission Must Certify Facts Found, and Not Merely Evidence.**—Under Const. § 156(f), the State Corporation Commission, on an appeal from an order fixing rates, must certify facts found, and not merely the evidence upon which its order is based, as otherwise it is impossible for the appellate court to know what facts or

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.